

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

AMO DEVELOPMENT, LLC,)
AMO MANUFACTURING USA, LLC,)
and AMO SALES AND SERVICE,)
INC.,)

Plaintiffs,)

v.)

ALCON VISION, LLC, ALCON)
LABORATORIES, INC., and ALCON)
RESEARCH, LLC,)

Defendants.)

ALCON, INC., ALCON RESEARCH,)
LLC and ALCON VISION, LLC,)

Counterclaim Plaintiffs,)

v.)

AMO DEVELOPMENT, LLC,)
AMO MANUFACTURING USA, LLC,)
AMO SALES AND SERVICE, INC.)
and JOHNSON & JOHNSON)
SURGICAL VISION, INC.,)

Counterclaim Defendants.)

Redacted - Public Version

C.A. No. 20-842-CFC-JLH



**ALCON'S RESPONSE TO PLAINTIFFS' CONCISE STATEMENT OF
FACTS FOR ALCON'S MOTION FOR SUMMARY JUDGMENT (NO. 2)
THAT ONLY AMO DEVELOPMENT, LLC IS ENTITLED
TO ACTUAL DAMAGES**

OF COUNSEL:

Jeanne M. Heffernan
James John Lomeo
KIRKLAND & ELLIS LLP
401 Congress Avenue
Austin, TX 78701
(512) 678-9100

Gregg F. LoCascio
Sean M. McEldowney
Noah S. Frank
Mary Elizabeth Miller
Elizabeth Hedges
Kelly Tripathi
KIRKLAND & ELLIS LLP
1301 Pennsylvania Avenue, N.W.
Washington, DC 20004
(202) 389-5000

Joshua L. Simmons
KIRKLAND & ELLIS LLP
601 Lexington Ave
New York, NY 10022
(212) 390-4573

Caroline Lourgou
KIRKLAND & ELLIS LLP
300 North LaSalle
Chicago, IL 60654
(312) 862-2000

Kristen P.L. Reichenbach
KIRKLAND & ELLIS LLP
555 California Street
San Francisco, CA 94104
(415) 439-1400

Dated: October 14, 2022

John W. Shaw (No. 3362)
Karen E. Keller (No. 4489)
Andrew E. Russell (No. 5382)
Nathan R. Hoeschen (No. 6232)
SHAW KELLER LLP
I.M. Pei Building
1105 North Market Street, 12th Floor
Wilmington, DE 19801
(302) 298-0700
jshaw@shawkeller.com
kkeller@shawkeller.com
arusell@shawkeller.com
nhoeschen@shawkeller.com

*Attorneys for Alcon Inc.,
Alcon Vision, LLC,
Alcon Laboratories, Inc. and
Alcon Research, LLC*

Alcon responds to Plaintiffs’ “Additional Material Facts” (D.I. 424 ¶¶7-14), as set forth below. This response is supported by Alcon’s concurrently filed Reply Brief in Support of Alcon’s Motion for Summary Judgment (No. 2) That Only AMO Development, LLC Is Entitled to Actual Damages (“Reply”), which further sets forth Alcon’s explanations and bases for responding to these “facts.”

I. ALCON’S RESPONSE TO PLAINTIFFS’ ADDITIONAL “FACTS”

7. Disputed, but the dispute is immaterial here. With respect to Alcon’s motion for summary judgment (No. 2), Alcon does not dispute that AMO Development is the *purported* legal owner of the copyrighted works. However, whether AMO Development is an *actual* owner of the copyrighted works is disputed and is the subject of separate motion practice. *See* D.I. 373; D.I. 374; D.I. 414.

8. Undisputed, but only to the extent that if JJSV “was” previously “a legal owner in certain of the copyrighted works,” *see* D.I. 424 ¶8, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

9. Undisputed, to the extent JJSV held any “legal rights in the asserted copyrights,” *see* D.I. 424 ¶9; [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

10. Disputed. As a matter of law, JJSV is not a beneficial owner of the asserted copyrights. *See* Reply 5-6; D.I. 427-1, Ex. 27 ¶2.

11. Disputed as not supported by Plaintiffs' citations, *see* D.I. 424 ¶11 (and citations therein), but immaterial. None of these entities is entitled to claim lost profits. *See* Reply 1, 4-6.

12. Disputed. As a matter of law, JJSV is not a "copyright owner" and has not been a "copyright owner" [REDACTED]. *See* Reply 3-6; D.I. 427-1, Ex. 27 ¶2. And it is undisputed that the alleged lost-profits damages in this action [REDACTED] *See, e.g.,* D.I. 141 ¶¶84, 99-101; A1968-78, Stamm Op. ¶¶167-99. In addition, JJSV is not a copyright plaintiff in this action. *See* Reply 2-6.

13. Disputed. As a matter of law, JJSV is not a "copyright owner" and has not been a "copyright owner" [REDACTED] *See* Reply 3-5; D.I. 427-1, Ex. 27 ¶2. And it is undisputed that the alleged lost-profits damages in this action [REDACTED]. *See, e.g.,* D.I. 141 ¶¶84, 99-101; A1968-78, Stamm Op. ¶¶167-99. Further, none of JJSV, AMO Manufacturing, AMO Sales and Service, and AMO Ireland is a "beneficial owner" of the asserted copyrights. *See* Reply 4-6 & n.2. In addition, JJSV and AMO Ireland are not copyright plaintiffs in this action. *See* Reply 4-5 & n.3.

14. Disputed on the basis that the “Schedules” or “Exhibits” [REDACTED]

[REDACTED] *see* D.I. 424 ¶14 (and citations therein), but immaterial. Plaintiffs contend that “AMO Development owns the Asserted Copyrights (and all rights thereunder).” D.I. 141 ¶55; *see* D.I. 424 ¶1. Further, none of AMO Manufacturing, AMO Sales and Service, and AMO Ireland is a “beneficial owner” of the asserted copyrights. *See* Reply 4-6 & n.2. In addition, AMO Ireland is not a copyright plaintiff in this action. *See* Reply 4-5 & n.3.

Respectfully,

OF COUNSEL:

Jeanne M. Heffernan
James John Lomeo
KIRKLAND & ELLIS LLP
401 Congress Avenue
Austin, TX 78701
(512) 678-9100

Gregg F. LoCascio
Sean M. McEldowney
Noah S. Frank
Mary Elizabeth Miller
Elizabeth Hedges
Kelly Tripathi
KIRKLAND & ELLIS LLP
1301 Pennsylvania Avenue, NW
Washington, DC 20004
(202) 389-5000

Joshua L. Simmons
KIRKLAND & ELLIS LLP
601 Lexington Ave
New York, NY 10022
(212) 390-4573

Caroline Lourgou
KIRKLAND & ELLIS LLP
300 North LaSalle
Chicago, IL 60654
(312) 862-2000

Kristen P.L. Reichenbach
KIRKLAND & ELLIS LLP
555 California Street
San Francisco, CA 94104
(415) 439-1400

Dated: October 14, 2022

/s/ Andrew E. Russell

John W. Shaw (No. 3362)
Karen E. Keller (No. 4489)
Andrew E. Russell (No. 5382)
Nathan R. Hoeschen (No. 6232)
SHAW KELLER LLP
I.M. Pei Building
1105 North Market Street, 12th Floor
Wilmington, DE 19801
(302) 298-0700
jshaw@shawkeller.com
kkeller@shawkeller.com
arussell@shawkeller.com
nhoeschen@shawkeller.com
*Attorneys for Alcon Inc.,
Alcon Vision, LLC,
Alcon Laboratories, Inc. and
Alcon Research, LLC*

WORD COUNT CERTIFICATION

The undersigned counsel hereby certifies that Alcon's Response to Plaintiffs' Concise Statement of Facts for Alcon's Motion for Summary Judgment (No. 2) That Only AMO Development, LLC Is Entitled to Actual Damages contains 588 words excluding the cover page, tables and signature blocks, as counted by Microsoft Word, in 14-point Times New Roman font.

/s/ Andrew E. Russell

John W. Shaw (No. 3362)

Karen E. Keller (No. 4489)

Andrew E. Russell (No. 5382)

Nathan R. Hoeschen (No. 6232)

SHAW KELLER LLP

I.M. Pei Building

1105 North Market Street, 12th Floor

Wilmington, DE 19801

(302) 298-0700

jshaw@shawkeller.com

kkeller@shawkeller.com

arussell@shawkeller.com

nhoeschen@shawkeller.com

Attorneys for Alcon Inc.,

Alcon Vision, LLC,

Alcon Laboratories, Inc. and

Alcon Research, LLC

CERTIFICATE OF SERVICE

I, Andrew E. Russell, hereby certify that on October 14, 2022, this document was served on the persons listed below in the manner indicated:

BY EMAIL

Jack B. Blumenfeld
Brian P. Egan
MORRIS, NICHOLS, ARSHT
& TUNNELL LLP
1201 North Market Street
P.O. Box 1347
Wilmington, DE 19899
(302) 658-9200
jblumenfeld@mnat.com
began@mnat.com

Roger J. Chin
Allison Harms
Joseph R. Wetzel
LATHAM & WATKINS LLP
505 Montgomery Street, Suite 2000
San Francisco, CA 94111
(415) 491-0600
roger.chin@lw.com
allison.harms@lw.com
joe.wetzel@lw.com

P. Anthony Sammi
Rachel Renee Blitzer
LATHAM & WATKINS LLP
1271 Avenue of the Americas
New York, NY 10020
(212) 906-1200
tony.sammi@lw.com

Michael A. Morin
Matthew J. Moore
Rachel Weiner Cohen
Sarang V. Damle
Holly K. Victorson
Carolyn M. Homer
Susan Y. Tull
LATHAM & WATKINS LLP
555 Eleventh Street, NW, Suite 1000
Washington, DC 20004
(202) 637-2200
michael.morin@lw.com
matthew.moore@lw.com
rachel.cohen@lw.com
sy.damle@lw.com
holly.victorson@lw.com
carolyn.homer@lw.com
susan.tull@lw.com

S. Giri Pathmanaban
LATHAM & WATKINS LLP
140 Scott Drive
Menlo Park, CA 94025
(650) 328-4600
giri.pathmanaban@lw.com

Aaron Macris
LATHAM & WATKINS LLP
200 Clarendon Street
Boston, MA 02116
(617) 948-6000
aaron.macris@lw.com

/s/ Andrew E. Russell

John W. Shaw (No. 3362)

Karen E. Keller (No. 4489)

Andrew E. Russell (No. 5382)

Nathan R. Hoeschen (No. 6232)

SHAW KELLER LLP

I.M. Pei Building

1105 North Market Street, 12th Floor

Wilmington, DE 19801

(302) 298-0700

jshaw@shawkeller.com

kkeller@shawkeller.com

arussell@shawkeller.com

nhoeschen@shawkeller.com

Attorneys for Defendants